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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff

11 v.

12 SEVERINO CRUZ-SALAZAR,

13 Defendant.

CASE NO. CR18-113RSM

ORDER DENYING MOTION FOR
COMPASSIONATE RELEASE

14 This matter comes before the Court on the Motion for Compassionate Release filed by
15 Defendant Severino Cruz-Salazar. Dkt. #31, supplemented by counsel at Dkt #38. Mr. Cruz-
16 Salazar, an inmate at North Lake Correctional Institution in Baldwin, Michigan, moves for
17 immediate release due to his risk of contracting COVID-19 while incarcerated and to address
18 potentially undiagnosed health conditions. *Id.*

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20 On December 7, 2018, this Court sentenced Mr. Cruz-Salazar to a 72-month prison term
21 for possession of a controlled substance with intent to distribute. Dkts. #28 and #29. His
22 projected release date is July 9, 2023.

23
24 On October 21, 2020, Mr. Cruz-Salazar applied to the warden at his facility for
25 compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). The petition was denied. Dkt.
26 #38 at 22. The parties agree he has satisfied the exhaustion requirement. *See* Dkt. #43 at 6.

1 Mr. Cruz-Salazar is 41 years old. *See* Dkt. #44. His Motion states that he is at a higher
2 risk of contracting COVID-19, that he has headaches, depression, and constant abdominal pain.
3 Dkt. #31 at 2. His medical records indicate he has nausea with his headaches and high levels of
4 pain, and that these headaches are quite frequent. *See* Dkt. #44. Mr. Cruz-Salazar is concerned
5 that he has an un-diagnosed, significant medical problem. Dkt. #38 at 3.

6 His medical records also indicate that he has been prescribed medication for the
7 headaches, along with advice on avoiding headache triggers. Dkt. #44 at 39. Brain imaging was
8 considered and ultimately found to not be “medically necessary.” *See id.* at 13 and 111. X-rays
9 were taken for his abdominal pain. *Id.* at 31. On December 17, 2020, notes from a visit with the
10 doctor indicate that his abdominal pain was reduced by the addition of “geri mucil fiber” and that
11 the x-rays indicated clinical constipation, and that the obstruction had passed. *Id.* at 47.

12 The Government, in its response, points to BOP records indicating that there are no
13 inmates at the North Lake Correction Institution currently testing positive for COVID-19 (at the
14 time the briefing was filed). Dkt. #43 at 8.

15 Pursuant to 18 U.S.C. § 3582(b), a judgment of conviction that includes a sentence of
16 imprisonment “constitutes a final judgment and may not be modified by a district court except in
17 limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 824 (2010) (internal quotations
18 omitted). Those limited circumstances are provided under 18 U.S.C. § 3582(c)(1)(A)(i).

19 The First Step Act of 2018 amended Section 3582(c)(1)(A) by adding a provision that
20 allows prisoners to directly petition a district court for compassionate release:

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22 (A) the court, upon motion of the Director of the Bureau of Prisons,
23 *or upon motion of the defendant after the defendant has fully*
24 *exhausted all administrative rights to appeal a failure of the Bureau*
25 *of Prisons to bring a motion on the defendant’s behalf or the lapse*
26 *of 30 days from the receipt of such a request by the warden of the*
27 *defendant’s facility, whichever is earlier, may reduce the term of*

1 imprisonment (and may impose a term of probation or supervised
2 release with or without conditions that does not exceed the unserved
3 portion of the original term of imprisonment), after considering the
4 factors set forth in section 3553(a) to the extent that they are
5 applicable, if it finds that—

6 (i) extraordinary and compelling reasons warrant such a reduction;
7
8 or

9 (ii) the defendant is at least 70 years of age, has served at least 30
10 years in prison, pursuant to a sentence imposed under section
11 3559(c), for the offense or offenses for which the defendant is
12 currently imprisoned, and a determination has been made by the
13 Director of the Bureau of Prisons that the defendant is not a danger
14 to the safety of any other person or the community, as provided
15 under section 3142(g);

16 and that such a reduction is consistent with applicable policy
17 statements issued by the Sentencing Commission

18 18 U.S.C. § 3582(c)(1)(A) (*italics reflecting amendment under First Step Act*).

19 The Sentencing Commission offers guidance on medical conditions that may warrant
20 compassionate release. Application Note 1 to USSG § 1B1.13 provides that “extraordinary and
21 compelling reasons” for a sentence reduction exist when:

22 (A) Medical Condition of the Defendant.

23 (i) The defendant is suffering from a terminal illness (i.e., a serious
24 and advanced illness with an end of life trajectory). A specific
25 prognosis of life expectancy (i.e., a probability of death within a
26 specific time period) is not required. Examples include metastatic
27 solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage
organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition, (II)
suffering from a serious functional or cognitive impairment, or (III)
experiencing deteriorating physical or mental health because of the
aging process, that substantially diminishes the ability of the
defendant to provide self-care within the environment of a

1 correctional facility and from which he or she is not expected to
2 recover.

3 USSG § 1B1.13 cmt. n.1(A).

4 Faced with the rapid spread of COVID-19 through the country's prison systems, many
5 courts have determined that the USSG's "medical condition" criteria are not well-suited to
6 addressing the risk of serious illness or death from COVID-19. As a result, courts in this district
7 have considered one or more of the following factors when evaluating a compassionate release
8 request based on the threat of COVID-19: (i) whether the inmate is at higher risk because of his
9 or her age and/or race; (ii) whether the inmate has one or more, medically-documented, chronic
10 health conditions that render him or her more vulnerable to COVID-19; (iii) the fatality rate for
11 individuals with similar health conditions as compared with the overall fatality rate for COVID-
12 19; (iv) whether the inmate has previously tested positive for the coronavirus that causes
13 COVID-19 and, if so, whether the inmate suffers from any long-term effects of the disease; and
14 (v) whether the inmate's release is expected to reduce the risk of him or her contracting COVID-
15 19. *United States v. Powers*, No. CR15-166 TSZ, 2020 WL 3605748, *2 (W.D. Wash. July 2,
16 2020) (collecting cases). Given the "catch-all" provision of the Commission's application notes,
17 *see* USSG § 1B1.13, cmt. n.1(D), as well as the non-binding status of the comments to USSG §
18 1B1.13, the Court has discretion to consider the above factors. *Id.*

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21 The Court finds that Mr. Cruz-Salazar has exhausted his administrative remedies and
22 therefore moves on to the question of extraordinary and compelling reasons particular to this
23 Defendant justifying the requested relief. Mr. Cruz-Salazar argues that this requirement is
24 satisfied by his heightened risk of contracting COVID-19 and due to his medical conditions
25 above.

1 The Court finds that Mr. Cruz-Salazar is currently managing his headaches and
2 abdominal pain with medication, and that he has failed to show he is not receiving adequate
3 medical care. The Court finds that Mr. Cruz-Salazar has failed to demonstrate one or more
4 medically-documented chronic health conditions rendering him more vulnerable to COVID-19.
5 There is no evidence that headaches, nausea, or this type of abdominal pain, separately or
6 together, place Mr. Cruz-Salazar at higher risk. His relatively young age does not place him at
7 high risk. The Court has not been presented with evidence of a significant outbreak of COVID-
8 19 in the facility where he is housed, and vaccines should become increasingly available for Mr.
9 Cruz-Salazar and other inmates at his facility. Any other arguments for extraordinary and
10 compelling circumstances lack sufficient evidence to support a finding that he is more vulnerable
11 to COVID-19.
12

13 Given all of the above, the Court finds no extraordinary and compelling reason to grant
14 the requested relief and the Court need not proceed through Mr. Cruz-Salazar's Section 3553
15 factors or any other considerations. Accordingly, having reviewed the Motion, along with the
16 remainder of the record, the Court hereby finds and ORDERS that Defendant's Motion for
17 Compassionate Release, Dkts. #31 and #38, is DENIED.
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19 DATED this 17th day of May, 2021.
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23 RICARDO S. MARTINEZ
24 CHIEF UNITED STATES DISTRICT JUDGE
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